



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP -6 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

Tim Haniford
Plant Manager
Chemtrade Refinery Solutions Limited Partnership
1400 Otter Creek Road
Oregon, Ohio 43616-1232

Dear Mr. Haniford:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves *In the Matter of Chemtrade Refinery Solutions Limited Partnership*, CAA Docket No.

CAA-05-2012-0048. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 6, 2012.

Pursuant to paragraph 35 of the CAFO, Chemtrade Refinery Solutions Limited Partnership must pay the civil penalty within 30 days of the above filing date of the CAFO. Your check must display the case name Chemtrade Refinery Solutions Limited Partnership, the docket number

CAA-05-2012-0048 and the billing document number 2751203A049.

Please direct any questions regarding this case to Robert H. Smith, Office of Regional Counsel Attorney, (312) 886-0765.

Sincerely,

William L. MacDowell, Chief
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Robert H. Smith/C-14J
Robert Hodanbosi, Ohio EPA
Karen Granada, City of Toledo

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2012-0048
)	
Chemtrade Refinery Solutions Limited Partnership)	Proceeding to Assess a Civil Penalty
Oregon, OH,)	
)	Under Section 113(d) of the Clean Air Act,
Respondent.)	42 U.S.C. § 7413(d)
_____)	

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Consent Agreement and Final Order

Preliminary Statement

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Chemtrade Refinery Solutions Limited Partnership (Chemtrade), a corporation doing business in Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 109(a) of the Act, 42 U.S.C. § 7409(a), requires EPA to establish health based National Ambient Air Quality Standards (NAAQS) for each criteria pollutant. The Act divides standards into two groups: primary ambient air quality standards to protect the public health with “an adequate margin of safety,” and secondary standards to protect the public welfare (such as injury to agricultural crops and other property). *See* Section 109(b) of the Act, 42 U.S.C. § 7409(b). EPA has developed NAAQS for six pollutants: carbon monoxide, lead, NO₂, particulate matter, ozone, and SO₂.

10. Pursuant to Section 107 of the Act, 42 U.S.C. § 7407, EPA has classified certain areas within each state as attainment, nonattainment, or unclassified (i.e., unknown) with respect to whether the area meets the NAAQS for each criteria pollutant. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, each state has the responsibility for submitting to EPA for approval an implementation plan which specifies how the state will achieve, maintain, and enforce all primary and secondary NAAQS.

11. Under Section 110(a)(2) of the Act, 42 U.S.C. § 7410(a)(2), each State Implementation Plan (SIP) must include a permit program to regulate the modification and

construction of any stationary source of air pollution as necessary to assure that NAAQS are achieved. The plans, which are adopted by the states after public hearings, are required to include enforceable emission limitations, control measures, and schedules for compliance. Upon EPA's approval of a SIP, the plans become independently enforceable by the federal government. *See* Section 113(a) of the Act, 42 U.S.C. § 7413(a).

12. In accordance with Section 110(a)(2), 42 U.S.C. § 7410(a)(2), Ohio EPA submitted OAC 3745-31 to be included as part of Ohio's SIP.

13. On October 31, 1980, EPA approved OAC 3745-31 as part of the federally enforceable SIP for Ohio. 40 Fed. Reg. 72119 (October 31, 1980).

14. OAC 3745-31-02(A) requires any owner or operator of a stationary source to obtain a permit-to-install (PTI) from the Director of the Ohio EPA prior to installing or modifying an air contaminant source. Further, the Director of the Ohio EPA will issue a PTI only if he/she determines that the installation, modification, or operation of the air contaminant source will, among other things, employ Best Available Technology (BAT).

15. OAC 3745-31-05(A)(3) requires that BAT be determined, established, and required in either the initial PTI, or when a modification of the air contaminant source requires the issuance of a PTI.

16. Clean Air Act §§ 501 through 507 (Title V), 42 U.S.C. §§ 7661a through 7661f, requires state and local authorities to develop a major source operating permit program. These operating permits (referred to as Title V permits) are required by Section 504(a), 42 U.S.C. § 7661c, to contain all applicable emission limitations and standards of the Act for each major source. For the purposes of the Title V permitting program, a major source is defined as a source with a potential to emit greater than 100 tons per year of any criteria air pollutant.

17. 40 C.F.R. Part 70 contains the implementing regulations for the Title V permitting program. 40 C.F.R. § 70.5(a) requires the owner or operator of each major source apply for an operating permit under Title V of the Clean Air Act (Title V Program).

18. 40 C.F.R. § 70.6(a) requires that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with “applicable requirements” of the CAA and the requirements of the applicable SIP. Among other things, “applicable requirements” include any terms or conditions of any preconstruction permit issued under Section 110 of the Act, 42 U.S.C. § 7410, such as limits established by Ohio EPA as BAT in a PTI under Ohio SIP rule OAC-3745-31-05(A)(3).

19. Furthermore, 40 C.F.R. § 70.7(b) requires major sources to operate in compliance with all terms and conditions of an issued Title V Permit.

20. EPA fully approved the Ohio Title V program, effective October 1, 1995. 60 Fed. Reg. 42045 (August 15, 1995). Ohio’s Title V permit requirements are codified at OAC-3745-77.

21. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation, *inter alia*, of a federally-approved SIP or Title V permit, up to a total of \$270,000, for violations that occurred after March 15, 2004 through January 12, 2009 and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

22. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney

General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

23. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

24. On June 24, 2011, Chemtrade assumed ownership of the emissions units, including two sulfuric acid plants, at 1400 Otter Creek Road, Oregon, Ohio through an acquisition of Marsulex, Inc. (Marsulex).

25. Chemtrade owns and operates two sulfuric acid plants at 1400 Otter Creek Road, Oregon, Ohio. The sulfuric acid plants are identified as Sulfuric Acid Plant A, Emission Unit P001, and Sulfuric Acid Plant B, Emission Unit P002.

26. Ohio EPA first issued PTI No. 04-00923 on March 8, 1995, to allow the prior owner, Marsulex, to modify Sulfuric Acid Plants A and B. The March 1995 permit established a limit prohibiting Plants A and B from emitting NO_x emissions great than 3.85 lb/hour, 16.5 tons per year and 2.42 lb/hour, 10.6 tons per year, respectively, and identified both rates as Best Available Technology (BAT) in accordance with OAC 3745-31-05(A)(3). Subsequent to March 1995, PTI No. 04-00923 has been amended by Ohio EPA three times, most recently on October 21, 2004. Each amendment has retained both rates of 3.85 lb/hour, 16.5 tons per year and 2.42 lb/hour, 10.6 tons per year for Plants A and B, respectively.

27. Ohio EPA issued Title V Permit No. P0088529 covering then Marsulex's source on January 9, 2004, with an effective date of January 30, 2004. Because the NO_x limits referenced in paragraph 26 above were established in a PTI, these limits are considered

“applicable requirements” as defined under 40 C.F.R. § 70.2. Therefore, in accordance with 40 C.F.R. § 70.6(a), the Title V Permit incorporated the NO_x limits of 3.85 lb/hour, 16.5 tons per year and 2.42 lb/hour, 10.6 tons per year for Plants A and B, respectively. These provisions are located at Part III, Emission Unit P001, A.I.I. for Sulfuric Acid Plant A and Part III, Emission Unit P002, A.I.I. for Sulfuric Acid Plant B.

28. On June 27, 2011, Chemtrade issued a letter to EPA self-disclosing that both Sulfuric Acid Plants A and B may have emitted and continue to emit NO_x in excess of 3.85 lb/hour, 16.5 tons per year and 2.42 lb/hour, 10.6 tons per year, respectively. Chemtrade’s self-disclosure of these exceedences is based on results of an emission test conducted on May 19, 2011, as part of an internal compliance analysis.

29. Chemtrade’s excess NO_x emissions from Sulfuric Acid Plants A and B are violations of the NO_x limit of 3.85 lb/hour, 16.5 tons per year and 2.42 lb/hour, 10.6 tons per year, respectively, as provided in PTI No. 04-00923.

30. Chemtrade’s excess NO_x emissions from Sulfuric Acid Plants A and B are violations of the NO_x limit of 3.85 lb/hour, 16.5 tons per year and 2.42 lb/hour, 10.6 tons per year, respectively, as provided in Chemtrade’s Title V Permit, No. P0088529.

31. Chemtrade’s failure to meet its NO_x emission limits at its Sulfuric Acid Plants A and B from approximately March 8, 1995 to April 10, 2012, is a violation of Section 502 of the CAA, 42 U.S.C. § 7661a, and the implementing regulation at 40 C.F.R. § 70.7(b); Section 110 of the CAA, 42 U.S.C. § 7410, and the implementing regulation at 40 C.F.R. § 52.23.

32. Chemtrade was notified of these violations in a Notice of Violation/Finding of Violation issued by EPA on September 28, 2011.

33. On April 10, 2012, Chemtrade submitted a permit modification request to Ohio EPA via Air Services for the purpose of revising upwards the NO_x emission limitations on Sulfuric Acid Plants A and B. The requested revised NO_x emission limitations for Sulfuric Acid Plants A and B are 5.89 lb/hr, 25.81 tons per year, and 3.71 lb/hr, 16.25 tons per year, respectively. Chemtrade asserts that these requested new rates are Best Available Technology (BAT) in accordance with OAC 3745-31-05(A)(3). The requested revised NO_x emission limitations were determined based on Chemtrade correcting a molecular weight mathematical error, updating its hours of operation, and installing new equipment to allow the injection of spent acid into the furnace to reduce NO_x emissions. Emissions calculation information along with EPA reference method stack test data indicates that Sulfuric Acid Plants A and B are meeting the requested revised NO_x emission limits.

Civil Penalty

34. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, Chemtrade's high level of cooperation and Chemtrade's steps taken for a prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$164,285.

35. Within 30 days after the effective date of this CAFO, Respondent must pay a \$164,285 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

For checks sent by express mail (non-U.S. Postal Service which will not deliver express mail to P.O. boxes) sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Respondent's name, docket number of this CAFO and the billing document number.

36. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO and the billing document number to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Robert H. Smith (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

37. This civil penalty is not deductible for federal tax purposes.

38. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the

penalty with interest, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

39. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

40. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

41. The effect of the settlement described in paragraph 40, above, is conditioned upon the accuracy of Respondent's representations to EPA and Ohio EPA, as memorialized in paragraphs 28 and 33 of this CAFO and Respondent's letter dated June 27, 2011.

42. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

43. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 40, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

44. Respondent certifies that it is complying fully with the requested revised NO_x emission limitations in the permit modification request it submitted to Ohio EPA on April 10, 2012.

45. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

46. The terms of this CAFO bind Respondent, its successors and assigns.

47. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

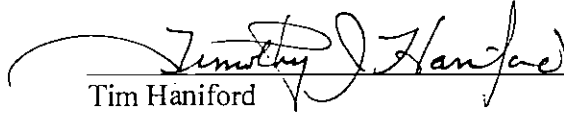
48. Each party agrees to bear its own costs and attorneys’ fees in this action.

49. This CAFO constitutes the entire agreement between the parties.

Consent Agreement and Final Order
In the Matter of: Chemtrade Refinery Solutions Limited Partnership
Docket No.

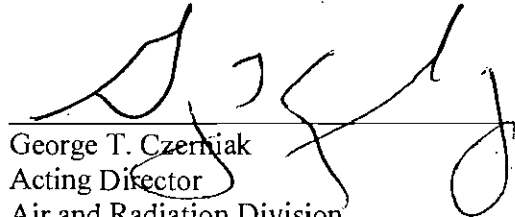
Chemtrade Refinery Solutions Limited Partnership, Respondent

08/23/2012
Date


Tim Haniford
Plant Manager
Chemtrade Refinery Solutions Limited Partnership

United States Environmental Protection Agency, Complainant

8/31/12
Date


George T. Czerniak
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order


In the Matter of: Chemtrade Refinery Solutions Limited Partnership

Docket No. CAA-05-2012-0048

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk.. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-4-12
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

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U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Consent Agreement and Final Order

In the Matter of: Chemtrade Refinery Solutions Limited Partnership

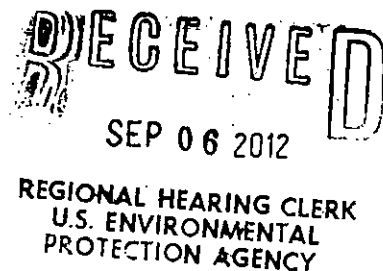
Docket No. CAA-05-2012-0048

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number [CAA-05-2012-0048] with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Tim Haniford
Plant Manager
Chemtrade Refinery Solutions Limited Partnership
1400 Otter Creek Road
Oregon, Ohio 43616-1232

Chester R. Babst III
Babst Calland Attorneys at Law
Two Gateway Center
603 Stanwix Street
6th Floor
Pittsburg, Pennsylvania 15222



I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Ann Coyle
Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Robert Hodanbosik, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

Karen Granada, Administrator
City of Toledo, Division of Environmental Services
348 South Erie Street
Toledo, Ohio 43604

Consent Agreement and Final Order

In the Matter of: Chemtrade Refinery Solutions Limited Partnership

Docket No. CAA-05-2012-0048

On the 6 day of Sept 2012.

Carol Wagner for Loretta Shaffer
Loretta Shaffer, APA
Planning and Administration
Section

CERTIFIED MAIL RECEIPT NUMBER:

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